



## *Nevada State Board of Medical Examiners*

### **\* \* \* MINUTES \* \* \***

#### **OPEN SESSION BOARD MEETING**

**Held in the Tropicana Ballroom at the Las Vegas Embassy Suites  
Hotel**

**4315 Swenson Street, Las Vegas, Nevada 89119**

**and videoconferenced to**

**The Nevada State Board of Medical Examiners Conference Room**

**1105 Terminal Way, Suite 301, Reno, Nevada 89502**

***FRIDAY, DECEMBER 2, 2005 – 8:30 a.m.***

***and***

***SATURDAY, DECEMBER 3, 2005 – 8:30 a.m.***

#### ***Board Members Present***

Javaid Anwar, M.D., President

Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer

Marlene J. Kirch

Charles N. Held, M.D.

Jean Stoess, M.A.

Cindy Lamerson, M.D.

S. Daniel McBride, M.D.

Benjamin J. Rodriguez, M.D.

#### ***Board Members Absent***

Sohail U. Anjum, M.D., Vice President

#### ***Staff Present***

Drennan A. Clark, J.D., Executive Director/Special Counsel

Laurie L. Munson, Deputy Executive Director/

Information Systems Administrator/Chief of Administration

Bonnie S. Brand, J.D., General Counsel

Edward O. Cousineau, J.D., Deputy General Counsel

Lyn E. Beggs, J.D., Deputy General Counsel

Robert J. Barnet, M.D., Medical Reviewer

Jerry C. Calvanese, M.D., Medical Reviewer

Lynnette L. Krotke, Chief of Licensing

Carolyn H. Castleman, Deputy Chief of Licensing

Douglas C. Cooper, Chief of Investigations

Pamela J. Castagnola, Deputy Chief of Investigations

Trent S. Hiatt, Investigator (in Reno)

Donald A. Andreas, Investigator (in Reno)

***Also Present***

Dianna Hegeduis, J.D., Chief Deputy Attorney General  
Peter A. Mansky, M.D., Director, Nevada Health Professionals Assistance Foundation  
John Lanzillotta, P.A.-C, Physician Assistant Advisory Committee Member  
Don Wright, R.R.T., Practitioner of Respiratory Care Advisory Committee Member  
Peggy Alby, R.R.T., Practitioner of Respiratory Care Advisory Committee Member

**FRIDAY, DECEMBER 2, 2005**

Agenda Item 1

**CALL TO ORDER AND ANNOUNCEMENTS**

- Announcement of New Attorney General Counsel to the Board, Chief Deputy Attorney General Dianna Hegeduis, J.D.
- Javaid Anwar, M.D., President

The meeting was called to order by President Javaid Anwar, M.D., at 8:30 a.m.

**- Announcement of New Attorney General Counsel to the Board, Chief Deputy Attorney General Dianna Hegeduis, J.D.**

Dr. Anwar welcomed Dianna Hegeduis, J.D., Chief Deputy Attorney General, as the Board's newly-assigned counsel from the Attorney General's Office.

Agenda Item 2

**APPROVAL OF MINUTES**

- June 3 & 4, 2005 Board Meeting – Open Session, *Amended Minutes*
- September 9 & 10, 2005 Board Meeting – Open/Closed Sessions
- June 30, 2005 Emergency Telephone Conference Call Board Meeting – Open Session

Dr. Baepler moved to approve the Amended Minutes of the June 3 & 4, 2005 Board Meeting - Open Session. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Ms. Stoess moved to approve the Minutes of the September 9 & 10, 2005 Board Meeting - Open/Closed Sessions. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 3

**PERSONNEL**

**Open Session**

- Introduction of New Deputy General Counsel, Lyn E. Beggs, J.D.
- Transition of Rebecca L. Grunau from Probationary to Permanent Status
  - Drennan A. Clark, J.D., Executive Director/Special Counsel

**- Introduction of New Deputy General Counsel, Lyn E. Beggs, J.D.**

Mr. Clark introduced the Board's new Deputy General Counsel, Lyn E. Beggs, J.D., and presented a brief history of her professional background.

**- Transition of Rebecca L. Grunau from Probationary to Permanent Status**

Mr. Clark advised the Board that Investigations Administrative Assistant Rebecca L. Grunau had successfully completed her probationary period and had been given permanent status and a concomitant salary increase, effective January 1, 2006.

Agenda Item 10

**REQUEST FOR APPROVAL TO PRACTICE OUTSIDE OF THE UNIVERSITY OF NEVADA SCHOOL OF MEDICINE'S PSYCHIATRY RESIDENCY PROGRAM, PER NRS 630.265(4)**

- Melanie Watkins, M.D., License No. LL1544
- Drennan A. Clark, J.D., Executive Director/Special Counsel

Mr. Clark explained that the Board had received a request for approval to moonlight from resident physician Melanie Watkins, M.D., which is supported by both the Director of the Psychiatric Residency program and the Medical School. Mr. Clark recommended the Board approve the request, based upon the current agreement between the Board and the Medical School.

Ms. Stoess moved that the Board approve Dr. Watkins' request to practice outside the University of Nevada School of Medicine's Psychiatric Residency Program. Dr. Held seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Rodriguez joined the meeting at 8:45 a.m.

Agenda Item 11

**DISCUSSION CONCERNING LICENSED RESIDENTS WHO DO NOT MEET THE REQUIREMENTS OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS REGULATIONS FOR FULL LICENSURE BECAUSE OF TIME AND/OR NUMBER OF ATTEMPTS TAKING USMLE**

- Javaid Anwar, M.D., President; Drennan A. Clark, J.D., Executive Director/Special Counsel

Dr. Anwar stated there are currently a number of physicians in residency training programs in Nevada who were granted limited licenses to participate in the training programs prior to the Board adopting the regulation requiring a physician to pass all three steps of the USMLE in a specified number of attempts and within a specified time limit who will now not qualify for full licensure under the new regulation, and this item is on the agenda for a determination as to how to handle those applicants.

Mr. Clark explained that prior to the Board's September 2004 meeting, the Board had been receiving a number of applications from applicants who had taken the USMLE many times over many years before passing all three steps. At the September 2004 meeting, the Board adopted a regulation requiring applicants for medical licensure to have passed all three steps of the USMLE in nine or fewer attempts and within seven years.

Dr. Anwar stated the question is what to do with those who were granted limited licenses to enter residency programs prior to the adoption of the regulation who now do not qualify for full licensure due to the number of attempts and/or number of years it took them to pass the USMLE.

Dr. Baepler stated this will be an issue only for a short period of time, and since the regulation is arbitrary in its effective date, the Board should be somewhat lenient in reviewing those applications. The Board always has an opportunity to make an exception to a regulation, and can review those applications on a case-by-case basis.

Dr. Anwar added this would apply only to those who were granted limited licenses to enter the residency programs prior to adoption of the new regulation.

Ms. Krotke stated there are currently several hundred residents in the various residency programs, and it would require a lot of work by the Licensing staff to determine which applicants are eligible for review by the Board and which are not, and this will add to the number of appearances before the Board at future meetings.

Dr. McBride moved that the regulation stand as adopted and the Board consider, on a case-by-case basis, those applicants who were granted Nevada limited licenses to enter residency programs prior to adoption of the regulation and who are affected by the new regulation when applying for full licensure. Ms. Stoess seconded the motion.

Further discussion ensued as to how to implement the motion if adopted.

A vote was taken on the motion and it passed, with Mrs. Kirch opposed to the motion and the Chair voting in favor of the motion.

#### Agenda Item 4

#### **CONSIDERATION OF ADOPTION OF AMENDMENTS TO NEVADA ADMINISTRATIVE CODE CHAPTER 630**

- Review of Public Comments on, and Consideration of Adoption of, Proposed Amendments to Nevada Administrative Code Chapter 630 to Adopt a Code of Ethics and to Approve Form for Reporting In-Office Surgical Procedures Using Anesthesia
  - Consideration of Amendment to Nevada Administrative Code Chapter 630, Requiring Licensees to Reinstatement to Previous License Status Before Changing to New License Status Following Suspension for Nonpayment of Renewal Fees Within Renewal Registration Period
  - Edward O. Cousineau, J.D., Deputy General Counsel
- Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630 to Approve a Form for Reporting In-Office Surgical Procedures Using Anesthesia**

Mr. Cousineau stated the first amendment to the Nevada Administrative Code is for approval of a form for reporting in-office surgical procedures using anesthesia. Workshops were held in Reno and Las Vegas, followed by a public hearing in Reno. The only input received was from Dr. Robert Merchant, who expressed concern with the definition of medical facilities in the NRS and expressed reasons as to why some of those should not be excluded from the proposed regulation. Additionally, he supported the requirement that any facility that intends to use any type or level of conscious sedation be approved by some regulatory authority, and he wants some kind of accounting or auditing mechanism to ensure the reports that are being tendered by the practitioners are accurate. The LCB reviewed the proposed regulation and suggested the Board strike from the regulation a specific form because if left in,

any future modification to it would require going through the formal regulatory process again. The LCB suggested the Board put the requirements in written form and place a form on the website with a recommendation it be used for reporting.

Mr. Clark stated the requirement to obtain reports concerning in-office surgeries from licensees was imposed upon the Board and the Board of Osteopathic Medicine by the Legislature for information-gathering purposes only for use at the 2007 legislative session.

Dr. Baepler stated the Board argued against passage of this requirement before the Legislature, as there are ample statistics available on a national level to identify the fundamental problem for which the Legislature is attempting to gather data. Any researcher will tell you that self-reporting does not provide a reliable database, and there is enough information right now that could be used to propose regulations regarding in-office surgeries. The Legislative directive was to gather this information so they could determine at the next session whether the problem was severe enough to warrant regulation.

Mr. Clark advised that if legislation is passed, the Division of Health will be overseeing regulation of it. He stated the reason the form was included in the draft regulation is that the statute says the Board will adopt a form by regulation. If the Legislative Counsel Bureau feels the form can be separate, then the Board can do it that way.

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association, said the reason they had no objection to this is that it follows the statute exactly, and if the LCB says there should be a separate form, they suggest the form be electronically available so it can be downloaded and that periodically through the year the Board check to see it is getting the reports so when the Legislature convenes again they can see whether this was a useful enterprise.

Hal Taylor, Esq. suggested it might be possible to draft the regulation to state that whatever form is currently being used is one that can be adopted during a Board meeting and that way the Board can make changes at a Board meeting and still comply with the technical language of the statute because it would be by regulation.

Discussion ensued concerning implementation of the statute and the regulation, if adopted.

Mrs. Kirch moved to adopt the regulation without the form. Dr. Rodriguez seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved to approve the form included in the meeting packet. Dr. Rodriguez seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**- Review of Public Comments on, and Consideration of Adoption of, Proposed Amendment to Nevada Administrative Code Chapter 630 to Adopt a Code of Ethics**

Mr. Cousineau stated the second amendment to the Nevada Administrative Code is to adopt a code of ethics. A workshop was held in Reno on November 7th. Dr. Steve Friedlander and his partner were the only individuals who appeared at the workshop, and Dr. Friedlander also submitted a letter to the Board with his comments. A workshop was held in Las Vegas on

November 8th, at which approximately ten individuals spoke. All comments received were negative, and ranged from outright rejection to rejection of certain portions of the regulation. Most individuals who spoke in Las Vegas submitted some form of correspondence consistent with their statements, and those were provided to the Board in advance of this meeting. A hearing was held in Reno on November 21st. Lawrence P. Matheis, Executive Director of the Nevada State Medical Association, was the only individual who appeared, and he also provided a letter to the Board which enunciated his thoughts concerning the regulation. In summary, there seems to be significant opposition to adoption of a code of ethics.

Dr. Barnet stated the proposed code of ethics was prepared by him at the direction of the Executive Director, with guidance from the Board's legal staff, and was in response to a problem with NRS 630.301(9), which referred to a national code of ethics adopted by the Board by regulation. He read NRS 630.301(9), and stated that at this year's session, the Legislature changed the provision to allow the Board to adopt a code of ethics based on a national code of ethics, rather than requiring the Board to adopt a national code of ethics. An attempt was made to take those elements which were common to a significant number of existing codes of ethics and remove provisions that might be controversial to one group or another. One of the major arguments is whether a code of ethics should be adopted by regulation. In at least some sense, there is a provision for a code of ethics currently existing, so it is not really new law, but implementation of existing law. Another issue that came up is whether other states have implemented such a law. Laurie Munson surveyed the other medical boards in the country and she received a total of 12 responses. Four states, Arizona, Louisiana, Oklahoma and Vermont, stated that they had not adopted a code of ethics. Idaho responded that it had not adopted a code of ethics for physicians, but "for our allied health boards the code of ethics was incorporated by the rules." Rhode Island has not formally adopted a code of ethics but uses the AMA Code of Ethics as a guideline. Six states who responded have adopted a code of ethics: Iowa; Kentucky and Maine have adopted the AMA Code; Nebraska includes a definition of "unprofessional conduct" in its statutes and its regulations refer to the AMA Code; Oregon has adopted "the codes of the professional organizations"; and Virginia has adopted a code of ethics by regulation.

Dr. Barnet noted that Weldon Havins, M.D. raised a question concerning the phrase, "except in an emergency," in Section I of the proposed code, which has to do with a physician's responsibility to patients and the requirement to provide care. He stated he agrees the phrase might be confusing and that it would be appropriate to strike the phrase from the document. Most of the other arguments go to the legal question of whether there is a law at the present time that requires a code of ethics, whether the Board should implement by regulation a code of ethics, or whether the Legislature should be asked to strike or modify Section (9).

Dr. Baepler said he agreed with striking the phrase, "except in an emergency." Nevada has a Good Samaritan law to handle the classic situations and he hopes the medical profession and others are preparing for the possibility of some natural disaster or act of terrorism, and it is an issue best left out of a code of ethics.

Mr. Clark pointed out that as Dr. Barnet mentioned, the reference to a code of ethics in the statute, NRS 630.301(9), does not make it mandatory for the Board to adopt a code of ethics; it only suggests that one be adopted, and the Board went forward on the basis that rather than have the Legislature come back at some time in the future and adopt a code of ethics for the Board because it had not done so, the Board should adopt one that was as little

onerous as possible and was as general as possible to cover all the bases. Additionally, all of the objections received were from the medical community; there were no objections from the public, and one of the things the Board has to consider when dealing with this kind of a question is that the Board members were appointed by the Governor and took an oath to uphold the laws of the state of Nevada, and pursuant to NRS 630.003, "the Board must exercise its regulatory power to ensure that the interests of the medical profession do not outweigh the interests of the public." Therefore, if there is a public value in adopting a code of ethics, that has to be a good portion of the Board's guide.

Dr. Baepler stated that when discussed at the June meeting, Dr. Lubritz made a comment which he thinks the Board members all agreed with, which was that a code of ethics should not in any way introduce new material that could be used by the Board for disciplinary reasons, and should therefore not be a threat to the profession, but a guideline. When Dr. Baepler read the proposed code of ethics, he read it in that perspective, and he is glad that others who have reviewed it and commented on it agree that every provision in the proposed code of ethics which, if violated, might cause the Board to take disciplinary action, is already covered in NRS 630 or NAC 630, so the proposed code of ethics doesn't introduce any new rules or regulations that the Board could use for enforcement. It perhaps elucidates a little what constitutes behavior that brings the profession into disrepute, although like many statutes, regulations and ethical provisions, these things are arguable, but it does not enhance the Board's ability to bring discipline.

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association, stated that every issue addressed in the proposed code of ethics that would tend to bring the profession into disrepute is already included in Nevada law and is stated more clearly in current Nevada law. In Nevada, regulations have the force of law, so if adopted by regulation, every piece of the code of ethics would become law. They do not oppose the proposed code of ethics as a code of ethics, and would recommend that every physician in the state adopt that as a personal code, but the Board is proposing to adopt a law that the Board will enforce and the courts will enforce, and it will restate the law in a manner that is not the same as in current law, which could lead to ambiguity in interpretation of the laws by a court if reviewing a case where this became an issue. Codes are philosophical statements of the moral underpinnings of how one acts in one's profession, and are not meant to be interpreted as legal proceedings; they are meant as personal guidelines, which is why they have been adopted by private organizations. The Board has never been challenged when taking an action against a physician on the basis of this particular statutory provision. So adoption of a code of ethics is taking an action in anticipation of an action that hasn't happened, and is creating unnecessary controversy in the way it is being pursued. So he is urging the Board to implement any code of ethics the Board adopts without having it enshrined into Nevada law.

Dr. McBride stated that since the proposed code of ethics has not been proposed to the Osteopathic Board it would be setting a double standard to require one group of physicians under one board to be held to a different standard than another group of physicians under another Board, and would be inappropriate. He asked whether any other professions in the state have a code of ethics which has been codified.

Ms. Hegeduis stated the Architectural Board has adopted their national organization's code of ethics, so she has seen other state agencies adopt another's code of ethics as to their profession. Attorneys have a code of ethics, which is set forth in Supreme Court Rules.

Dr. Anwar agreed that all physicians in the state should be treated equally by any code of ethics which might be adopted. He also suggested the Board consider adopting the code of ethics as a guideline and not a regulation.

Dr. Baepler said he felt obligated to provide some response to the Legislature, but that response does not need to be made until 2007, so there is time to address the matter with the Board of Osteopathic Medicine, make any changes, and go through the hearing process again. He would like to strike the clause, "except in an emergency," and possibly eliminate Section III, Societal Responsibilities. That area applies to everyone, physicians or not, and has been preempted by governmental agencies, totally and completely, through all of society.

Weldon Havins, M.D. commended Dr. Barnet for his efforts and his service to the Board. He then stated the only onerous provision he noted in the proposed code was the "except in an emergency" clause, but also saw number 5 in Section I as somewhat problematic in that it may obligate a physician to provide an interpreter to a patient who does not speak English. Additionally, numbers 1, 3, 4, 7 and 8 in Section II contain the word "should," and those should be replaced with the word "shall," since a regulation has the force of law. Number 2 is also unclear as to who is going to make the determination as to respect, integrity and honesty. Number 10 makes physicians ethically obligated to report violations of the Medical Practice Act; however, there is currently a statute that makes physicians legally obligated to report these. He agrees wholeheartedly with removing the Societal Responsibilities section from the code, since it would be difficult to enforce upon individual licensees.

Discussion ensued concerning whether it would make a difference to the Board's Investigative Committees from a legal standpoint whether the code of ethics was a guideline or a regulation, and whether the Societal Responsibilities section should be retained or removed.

Ms. Hegeduis stated that NRS 233B, the Administrative Procedures Act, defines a regulation as "an agency rule, standard, directive or statement of general applicability." So if the Board were to adopt guidelines and force people to comply with them, it would in essence be ad hoc rule-making, which a court would not consider favorably. If the Board wants to establish guidelines and require people to follow them, especially if it intends to prosecute people for non-compliance, she would highly recommend the Board do so in the form of a regulation.

Dr. Baepler added that a guideline is a suggestion, and would never hold up in court.

Mr. Cousineau stated that ambiguity has always been the problem with this regulation. The Board has struggled with that quite a bit and he has been lobbying more for a definition of disrepute rather than for a code of ethics to clarify what brings disrepute upon the profession. This is not to denigrate or question Dr. Barnet's efforts, as they are commendable and have a purpose, but as a prosecutor, he thinks this is creating additional problems, not fewer, and the reason the language was added after disrepute was supposedly to define disrepute, but quite frankly it doesn't define it, it just makes it more ambiguous or convoluted, so he thinks a more specific definition of disrepute is what is really needed.

Dr. Baepler moved that the proposed regulation be referred back to staff, including Dr. Barnet and legal counsel, for consultation with individual members of the Board and revisions based upon the discussion today, and with the ultimate objective of a collaborative



effort between the M.D.s and D.O.s to ensure equal treatment, and the proposed regulation be brought back to the Board for further consideration at its March meeting. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**- Consideration of Amendment to Nevada Administrative Code Chapter 630, Requiring Licensees to Reinstate to Previous License Status Before Changing to New License Status Following Suspension for Nonpayment of Renewal Fees Within Renewal Registration Period**

Mr. Cousineau stated the third amendment to the Nevada Administrative Code would require licensees to reinstate to active status before changing to inactive status once they have been suspended for nonpayment of renewal fees. The statutes are clear that a licensee must pay double the registration fee to reinstate his license once suspended for nonpayment, but there is nothing in the statutes or regulations that requires a licensee to reinstate to his previous license status, as has been Board protocol and policy. Staff worked its way through this and was able to explain it to the affected licensees during the last renewal period, but he thinks it is something the Board should codify prior to the next renewal period in order to clarify the Board's policy.

Mrs. Kirch moved that Board staff go forward with drafting a proposed regulation requiring licensees to reinstate to their previous license status after being suspended for nonpayment of renewal fees before changing license status. Dr. Held seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 5

**CONSIDERATION OF AND DISCUSSION CONCERNING AMENDMENT TO NEVADA ADMINISTRATIVE CODE CHAPTER 630 TO DEFINE LASER SURGERY AS PRACTICE OF MEDICINE**

- Drennan A. Clark, J.D., Executive Director/Special Counsel; Robert Merchant Jr., M.D.

Mr. Clark stated the Board has received a number of calls from practitioners concerning unlicensed individuals using lasers in salons and other facilities, and whether that constitutes the practice of medicine and should be regulated, which apparently it currently is not in Nevada. Staff obtained, and has provided to the Board, a summary from the Federation of State Medical Boards concerning how the various states treat the use of lasers. Most states are treating any use of lasers as the practice of medicine and if lasers are utilized, a physician must be present or has to be able to get to the facility in a reasonable time, and the physician is responsible for the training of non-physicians who use laser equipment on individuals. In 1998, the Board issued an opinion letter stating the use of lasers was the practice of medicine and that physicians were responsible for those utilizing lasers under their supervision. Staff has brought this to the Board for consideration and determination as to whether it wants to draft a regulation which would define the use of lasers as the practice of medicine.

Dr. Baepler stated he sees two basic problems. One is the differentiation between high-powered and low-powered lasers, if that distinction could be made, and the second is that the Board does not have jurisdiction over individuals who use lasers who are not M.D.s. The Board discussed this issue about five years ago and it always arrived at a dead-end, as it was determined the individuals who would abuse any regulation the Board adopted are those over whom the Board has no jurisdiction.

Robert Merchant, Jr., M.D., stated he thinks this is a serious safety issue for the public. He is concerned because lasers of any magnitude can pose a danger to patients if misused, and he has had patients coming to his office with complications related to what appears to be laser use by non-medical individuals to treat spider veins and varicose veins. Lasers are for sale on the secondary market to anyone who wishes to buy them. He helped the Nursing Board set up guidelines for treatment with lasers by nurses. They also defined what constitutes supervision by a physician as a physician licensed in the state of Nevada, readily available by telephone within 30 minutes and a physical response time at the site where the procedure is performed, and who also has knowledge, skill and ability to perform the procedure. These lasers are surgical lasers designed to alter tissue, and the problems seen are medical and surgical when they develop, such as burns, and a potential for eye injury is also present. He thinks this falls under NRS 630.020(1) and the Board should make sure these procedures are being performed by persons duly licensed by the Medical Board and the requirements for training and qualification should be clearly determined and spelled out by the Medical Board, especially when being done in non-hospital facilities.

Dr. Anwar stated lasers can be used for many things and the Board needs to know whether people in the community are complaining to the state or any agency that a problem exists that needs to be addressed or whether it is something that is a concern of well-meaning practitioners who may feel it is competition to their own trade.

Discussion ensued concerning types of lasers, treatment with lasers, individuals utilizing lasers, and the sale of lasers to physicians and non-physicians.

Dr. Rodriguez stated laser or light therapy which can alter human tissue should be regulated under the practice of medicine. He sees a lot of people referred to him for post-laser complications.

Mr. Clark asked whether the Board would like staff to draft a proposed regulation for consideration at a future meeting.

Dr. Lamerson stated there is no state regulation at all and basically anyone can use a laser. Laser companies focus on doing business in states that do not have regulations as to whether they can do business in the state, and some have come to Nevada. The complication rate from laser procedures is fairly low, but it exists. She has had a number of people come in with complications from salons using lasers. She did a tally and 15 states require an M.D. on site for laser treatments, 3 states require an individual to be an R.N. or higher to use lasers, in 9 states anyone can use lasers, Nevada is one of those, and 11 states have adopted regulations that specify only doctors can use lasers. She thinks low-intensity lasers can cause as much or more damage as high-intensity lasers, and there are other types of machines that should also be addressed.

Dr. McBride suggested the Board make a recommendation to the Legislature that they create legislation setting out specifically who is allowed to purchase, operate or utilize this type of equipment.

Mr. Cousineau stated the legal staff's position when responding to calls concerning use of lasers is standard, and something that has been in place for years. The response is that the use of lasers does constitute the practice of medicine. It can be delegated to medical assistants, which is defined in the NAC, and which requires a supervising physician, and whether the physician must be on site or available within 30 minutes is a standard-of-care issue which is left to the discretion of the physician. The use of lasers does fit the definition of the practice of medicine and therefore there must be a Nevada physician somehow involved in the process. He doesn't know whether more specific legislation is required because the definition is clear.

Dr. Baepler moved that staff draft prototype legislation for submission to the Legislature for the 2007 session concerning use of lasers on humans. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

#### Agenda Item 6

#### **CONSIDERATION OF AND DISCUSSION CONCERNING AMENDMENT TO NEVADA ADMINISTRATIVE CODE CHAPTER 630 TO ALLOW LICENSURE OF RENOWNED PHYSICIANS LICENSED IN OTHER STATES OR COUNTRIES WHO WANT TO PRACTICE IN NEVADA AT A CUTTING-EDGE MEDICAL CENTER OF EXCELLENCE**

- Javaid Anwar, M.D., President; Drennan A. Clark, J.D., Executive Director/Special Counsel

Dr. Anwar stated that in the past, the Board has denied licensure to some extraordinarily qualified physician applicants because they did not meet all of the statutory criteria to obtain a license. There are special needs at cancer research centers and other specialized facilities which these physicians could fulfill, but there is nothing in place that would allow the Board to grant a license to these renowned physicians who want to practice at these facilities in Nevada.

Dr. Baepler stated the University has this problem with its research programs as well, and when they need specialized researchers who are not available in the states, they open the avenue to review applicants on an individual basis to allow licensure based upon their credentials and qualifications.

Ms. Krotke said she has concerns regarding verification of these physicians' credentials because the Licensing Division cannot obtain examinations from foreign countries or sealed verifications with the exception of their transcripts.

Dr. Baepler suggested the Board could look at the awards and accolades received by the physicians and whether they have graduated from well-known medical schools in their countries.

Dr. Anwar stated it would be a similar situation to those physicians who are licensed in another state, but don't meet all of the requirements for licensure in Nevada, and therefore must apply for licensure by endorsement, and for the same reason, they would have to be associated with a specialized research center or center of excellence.

Dr. Held suggested the center of excellence come before the Board, present the applicant and provide the applicant's credentials, and then the application could be submitted following that appearance.

Dr. McBride voiced a concern with applying these exceptions fairly to all groups. Discussion ensued concerning this issue.

Dr. Baepler stated the position that such a person would occupy has to be primarily a research position.

Dr. Anwar said the purpose of making an exception would be to better serve the community, and not to create a loophole for licensure.

Mr. Clark stated that under NRS 630.160, the Board currently cannot license these physicians and it would require a statutory change in order to do so. Discussion ensued concerning how these physicians could become licensed in Nevada.

Dr. Held moved that the Board make no changes to the present statutes. Mrs. Kirch seconded the motion, and it passed, with the Chair voting against the motion.

#### Agenda Item 7

**CONSIDERATION OF REQUEST BY RANDY C. WATSON, M.D., LAKE TAHOE ORTHOPAEDIC INSTITUTE, TO AMEND THE BOARD'S LICENSE RENEWAL FEE POLICY WITH RESPECT TO FELLOWS PARTICIPATING IN FIRST ROTATION OF LAKE TAHOE ORTHOPAEDIC INSTITUTE'S SPORTS MEDICINE FELLOWSHIP PROGRAM**

- Randy C. Watson, M.D., Lake Tahoe Orthopaedic Institute

Randy C. Watson, M.D. explained that he runs two six-month fellowship programs each year, and although it would normally make sense for them to run from January to June and from July to December, due to the ski season, which is a big part of the fellowship, they are administered such that one rotation ends in July. In odd-numbered years, this means that those in the rotation ending in July must renew their licenses for an entire year and pay the entire \$600 fee when they only need the license for one month of the new biennium to complete their fellowship. He is therefore asking the Board for a variance to allow those in that particular fellowship program an exemption from paying the license fee twice when they only use the renewed license for one month.

Dr. Baepler stated the statute defines the licensure period as ending specifically on June 30, and it would therefore require a statutory amendment for the Board to grant an exemption.

Dr. Held moved that the Board deny the variance request of Lake Tahoe Orthopaedic Institute. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

#### Agenda Item 8

**CONSIDERATION OF REQUEST TO PRESCRIBE TO HOTEL GUESTS WITHOUT PERSONAL CONTACT WITH THOSE GUESTS**

- Cary Logan, M.D., Medical Director for Inn-House Doctor

Cary Logan, M.D., Medical Director for Inn-House Doctor, explained that his company, currently offers medical care to Las Vegas visitors by providing phone consultations to those staying in area hotels. They triage patients over the phone and may either offer a medical visit

or refer the patient to a medical facility if there is the need. Inn-House Doctor also has an agreement with pharmacies on the Las Vegas Strip to deliver prescriptions 24 hours a day. They want to expand their program to allow these pharmacies to provide a form to a patient who comes into the pharmacy with a problem that the patient would complete, which would include the patient's medical history, and then send the form to a physician from Inn-House Doctor, who would review it and then talk with the patient over the phone and determine an appropriate course of care. The physician would then either refer the patient to a clinic, recommend a hotel visit by a physician, give a referral to an emergency room, or instruct the pharmacist to give the patient appropriate medication.

Dr. McBride stated he did not feel the way medicine is practiced should be different for the tourist population than it is for residents of the state.

Dr. Rodriguez stated there are no regulations requiring a face-to-face visit to establish a patient-doctor relationship, and that it is up to the physician as to how he or she wants to practice medicine. It is a standard-of-care issue.

Dr. Calvanese and Dr. Barnet were both of the opinion that it is an unwise practice and a physician practicing in that manner would be leaving himself open to liability.

Dr. Baepler moved that the Board decline to consider the request. Dr. McBride seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Ms. Hegeduis stated that in essence, Dr. Logan was requesting an advisory opinion from the Board concerning his company proceeding in the manner described, and the Board doesn't have statutory authority to give him an advisory opinion.

#### Agenda Item 9

#### **CONSIDERATION OF REQUEST BY RAJIV BUDDEN, M.D. FOR MODIFICATION OF BOARD'S DIRECTIONS TO HIM** *(Tabled from September 9 & 10, 2005 Board Meeting)*

- Rajiv Budden, M.D. and/or Hal Taylor, Esq.

Dr. Budden appeared with his attorney, Hal Taylor, Esq.

Mr. Taylor stated that at the March meeting, the Board asked Dr. Budden to obtain letters from Antelope Valley Hospital concerning his competency. Dr. Budden was unable to obtain the requested letters, so they provided other letters of recommendation to the Board, including one from the Chairman of the Anesthesia Department where Dr. Budden currently works and one from Simi Valley Hospital, where they recommended him without reservation. Since the March meeting, they have provided the Board with six letters, which he believes sufficiently document Dr. Budden's competency. He believes competency was the only remaining issue as of the last meeting, but they are here to address any issues that any Board member may have.

Ms. Krotke stated the letters from HDMG in Lancaster do not specifically meet the Board's requirements.

Mr. Taylor stated that Antelope Valley Hospital sent a letter to Simi Valley Hospital recommending Dr. Budden without reservation.

Dr. Budden explained that he had passed the written Anesthesia Boards but still has to take the oral exams in April 2006 in order to become Board Certified.

Mr. Clark explained the original problem was an untrue response on Dr. Budden's application. He told the Board that at an Administrators in Medicine conference last month, one of the presenters was from the Robert Wood Johnson Medical School in the state of New Jersey, where they have a program called "Professional Renewal and Medicine Through Ethics," which is a 2-1/2 day in-residence course in ethics. If an applicant makes an untrue statement on his or her application, a board can require the applicant to take the course and if the applicant completes and passes it, the Board will agree to grant him or her a license. Mr. Clark stated he didn't know if this was something the Board might want to consider in this case, but it is a way that some boards are dealing with the issue of untrue responses on applications.

Mr. Taylor stated that the Board has the letter from the Assistant Legal Advisor from the Medical College of Georgia which confirms that when the Medical College of Georgia stated Dr. Budden was terminated from his internship program, the College was referring to the fact that his contract was not renewed, so, based upon the record, he does not think the Board can continue to sustain an allegation of misrepresentation by Dr. Budden by way of his response to that question on his application.

Dr. Baepler said the Board is back to where it was in September, with an exchange of one doctor for another, with one additional signature, and moved that the Board grant Rajiv Budden, M.D.'s application for licensure. Ms. Stoess seconded the motion, and it passed, with Mrs. Kirch, Dr. Held and Dr. Lamerson opposed to the motion and the Chair voting in favor of the motion.

Agenda Item 12

**DISCUSSION CONCERNING ADDITION OF "PHYSICIAN LICENSING" TO LIST OF CREDENTIALING AGENCIES THE NEVADA STATE BOARD OF MEDICAL EXAMINERS DOES NOT ACCEPT**

- Lynnette L. Krotke, Chief of Licensing

Ms. Krotke stated there are currently two credentialing agencies from which the Board does not accept applications, U.S. Medical Licensing and PLS. The Licensing staff recently received a form attached to a hospital verification for an applicant which stated, "If you say yes to any question of derogatory nature, contact Physician Licensing prior to sending the form to the medical board." She believes it is an attempt by Physician Licensing to prevent the

Licensing staff from obtaining information directly from the source, and she is asking the Board for authority to add this entity to the list of entities from which the Board will not accept applications. This is a new credentialing agency, and this is the first thing she has seen from them.

Dr. Held moved that the Board add Physician Licensing to the list of entities from which the Board does not accept applications for licensure. Dr. McBride seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 13

**CONSIDERATION OF REQUESTS BY THE NEVADA STATE MEDICAL ASSOCIATION (NSMA) AND THE CLARK COUNTY MEDICAL SOCIETY (CCMS) FOR APPOINTMENT OF BOARD MEMBER LIAISONS**

- Javaid Anwar, M.D., President; Drennan A. Clark, J.D., Executive Director/Special Counsel

Mr. Clark stated that Dr. Lamerson has indicated a willingness to serve as the Board liaison to the Nevada State Medical Association, but the Board still needs a physician to act as liaison to the Clark County Medical Society.

Weldon Havins, M.D. stated the Medical Society meets the third Tuesday evening of every month, and their meetings begin at 6 p.m. and usually conclude by 7:30 p.m.

Dr. Rodriguez volunteered to act as the Board liaison to the Clark County Medical Society.

Agenda Item 14

**REPORTS**

- Diversion Program - Quarterly Report - Peter Mansky, M.D., Executive Director, Nevada Health Professionals Assistance Foundation
- Physician Assistant Advisory Committee - John P. Lanzillotta, P.A.-C; Janet Wheble, P.A.-C, Advisory Committee Members
- Practitioner of Respiratory Care Advisory Committee - Don Wright, R.R.T., Advisory Committee Member
  - Consideration of Request for Approval of Appointment of Replacement Committee Member
- Investigative Committees - Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer, Chairperson, Investigative Committee A
  - Sohail U. Anjum, M.D., Chairperson, Investigative Committee B
  - Consideration of Cases Recommended for Closure by the Committees
- Investigations Division - Douglas C. Cooper, Chief of Investigations
  - Status of Investigative Caseload
  - Project Update
  - Training Report
- Nevada State Medical Association Liaison Report - Lawrence P. Matheis, Executive Director, Nevada State Medical Association
- Clark County Medical Society Liaison Report - Weldon Havins, M.D., J.D., CEO and Special Counsel, Clark County Medical Society
- Washoe County Medical Society Liaison Report - Cindy Lamerson, M.D., Board Member; Jeanie L. Catterson, Executive Director, Washoe County Medical Society
- Secretary-Treasurer - Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer
  - Status of Finances
- Administrators in Medicine's Fall Board of Directors Meeting, September 28-30, Atlanta, GA
  - Drennan A. Clark, J.D., Executive Director/Special Counsel
- Federation of Associations of Regulatory Boards (FARB) 30th Annual Attorney Certification Seminar, October 14-16, 2005, Palm Beach, FL - Bonnie S. Brand, J.D., General Counsel
- Administrators in Medicine's 2005 Western/Central Regional Meeting, October 27-28, 2005, Portland, OR
  - Drennan A. Clark, J.D., Executive Director/Special Counsel

**- Diversion Program: Quarterly Report**

Peter A. Mansky, M.D., told the Board the Diversion Program is currently monitoring 82 individuals, 76 of whom are allopathic physicians, physician assistants or respiratory therapists, 24 from northern Nevada, 55 from southern Nevada, and 3 from out of state. The Program operates two weekly support meetings for physicians, one in the north and one in the south, which he believes is good for prevention. The program is always looking for good treatment and evaluation centers for disruptive physicians because that is something the Diversion Program does not do. The Program's current financial reserve is four months. They have received a donation of \$9,999 from the Osteopathic Board and a small donation from one hospital. Dr. Mansky has inherited several legal cases against the Program, and he, Mr. Clark and Keith Lee have discussed this with Assemblywoman Barbara Buckley.

**- Physician Assistant Advisory Committee**

John Lanzillotta, P.A.-C, stated that physician assistants currently cannot provide medical care in emergency disaster situations, and at the Board's September meeting the Advisory Committee provided the Board with examples of legislation from other states concerning this issue. At that meeting, the Board suggested the Advisory Committee formulate language for revision of the statute and provide it to the Board for review. The Advisory Committee contacted the American Academy of Physician Assistants and the Government Affairs Director, who made available to the Advisory Committee model legislation, which they have provided to the Board for consideration.

Dr. Baepler stated the role of physician assistants in emergency situations should be defined in an emergency response plan, which would also give physician assistants authority to act under the plan.

Dr. McBride moved that the Board recommend to the Legislature that they consider adoption of a mass disaster plan, which would include physician assistants, and allocation of the necessary resources to fund the plan. Dr. Lamerson seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**- Practitioner of Respiratory Care Advisory Committee**

**- Consideration of Request for Approval of Appointment of Replacement Committee Member**

Don Wright, R.R.T. stated the Advisory Committee has provided the Board with a recommendation to appoint Peggy Alby, R.R.T. as a Committee member to replace Mike Garcia, R.R.T., who resigned in September.

Mrs. Kirch moved that the Board appoint Peggy Alby, R.R.T. to the Practitioner of Respiratory Care Advisory Committee. Dr. Held seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.



**Investigative Committees – Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer,  
Chairperson, Investigative Committee A  
Sohail U. Anjum, M.D., Vice President, Chairperson,  
Investigative Committee B**

**- Consideration of Cases Recommended for Closure by the Committees**

Dr. Baepler reported that Investigative Committee A considered 157 cases, authorized the filing of formal complaints in 3 cases, sent 1 case out for peer review, requested appearances in 14 cases, referred 22 cases back to investigative staff for further investigation or follow-up and recommended closure of 117 cases.

Mr. Cooper reported that Investigative Committee B considered 74 cases, authorized the filing of formal complaints in 4 cases, sent 1 case out for peer review, requested an appearance in 1 case, referred 9 cases back to investigative staff for further investigation or follow-up and recommended closure of 59 cases.

**- Investigations Division**

**- Status of Investigative Caseload**

Mr. Cooper stated there were currently 669 open cases, which equaled a caseload of 111.5 cases per investigator. In June the caseload was 85 cases per investigator, in September it was 105, and if the trend continues, they will have to hire another investigator or they will not be able to work the cases. There are 60 peer reviews in the field and 53 peer review requests in the queue.

Mr. Cooper told the Board questions concerning mobile ultrasound vans had come up several times. The FDA will bring him up to date as to whether they plan to do anything about those that appear to be operated by individuals who are not physicians.

Mr. Cooper stated that the National Board of Respiratory Care (NBRC) has created an equivalent of the National Practitioner Databank for reporting disciplinary actions against respiratory therapists. The Board has been registered with the databank and staff will begin reporting to it.

**- Project Update**

Mr. Cooper advised the Board the temporary employee hired to assist with various projects has completed the update of the LCB reporting database and is currently half-way through with removing the malpractice case information from the website.

**- Training Report**

Mr. Cooper told the Board that Investigator/Compliance Officer Terri Ward attended NADDI training in South Carolina concerning the ways illicit drugs are being distributed to the public, and will share this information with the other investigators.

**Investigative Committees – Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer,  
Chairperson, Investigative Committee A  
Sohail U. Anjum, M.D., Vice President, Chairperson,  
Investigative Committee (CONTINUED)**

**- Consideration of Cases Recommended for Closure by the Committees (CONTINUED)**

Dr. Held moved to approve for closure the cases recommended by the Investigative Committees. Dr. Rodriguez seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**- Nevada State Medical Association Liaison Report**

Lawrence P. Matheis, Executive Director of the Nevada State Medical Association, stated they have been sending reports to Dr. Lamerson, and will continue to do so. The Medical Association is opposing a proposed regulation by the Pharmacy Board allowing pharmacists to refuse to fill legal prescriptions for reasons of conscience, which could have a significant impact on both physicians and patients in the state.

**- Clark County Medical Society Liaison Report**

Weldon Havins, M.D., J.D., CEO and Special Counsel of the Clark County Medical Society, stated the Medical Society continues to enjoy professional and cordial relationships with Board staff. He had nothing else to report at this time.

**- Secretary-Treasurer**

**- Status of Finances**

Dr. Baepler stated the Board has \$3,630,000 in investments and interest rates have been rising. The projected revenues from interest were based on closer to 2% than the 4% the Board is currently receiving, so that is a positive. The Board operates on an annual budget; however, revenues are collected on a biennial basis. The physician application fees appear to be lower, percentage-wise, than the Board has collected in the past. This is offset by the additional interest the Board's investments are earning, but it is an area of concern, as it appears applications have slowed a bit.

Ms. Krotke stated the number of applications received by the Board typically decreases during the holidays, but she anticipates the number will again increase.

**- Administrators in Medicine's Fall Board of Directors Meeting, September 28-30, 2005, Atlanta, GA**

Mr. Clark advised the Board that Administrators in Medicine is continuing to work on a certification course for investigators of all state medical boards.

**- Federation of Associations of Regulatory Boards (FARB) 30<sup>th</sup> Annual Attorney Certification Seminar, October 14-16, 2005, Palm Beach, FL**

Ms. Brand advised the Board that she and Ms. Beggs attended the FARB Annual Attorney Certification Seminar in Florida, where they received updates on how other regulatory boards handle cases. It was a terrific seminar; probably one of the best she has attended in her legal career.

**- Administrators in Medicine's 2005 Western/Central Regional Meeting, October 27-28, 2005, Portland, OR**

Mr. Clark stated the main topic of discussion at the Western/Central Regional Meeting was alternatives to discipline when dealing with troubled physicians.

Agenda Item 15

**EXECUTIVE STAFF REPORTS**

- Consideration of Request for Staff Attendance at Educational Meetings
- Status of Staff Additions and Board Office Space
- Informational Items
  - Drennan A. Clark, J.D., Executive Director/Special Counsel

**- Consideration of Request for Staff Attendance at Educational Meetings**

Mr. Clark requested authority for staff to attend the educational meetings outlined on the list provided to Board members as part of the agenda packet, as well as to send Lynnette Krotke to management training in Reno in December, and if Ms. Krotke then recommends the management training, to send Laurie Munson, Carolyn Castleman and Pamela Castagnola to a future offering of the same training.

Mrs. Kirch moved to approve the requests for training as outlined in the agenda book and by Mr. Clark. Dr. Rodriguez seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**- Status of Staff Additions and Board Office Space**

Mr. Clark said the Board is now in a position to begin the office remodel, as Nick Moschetti has moved out of the office space on the second floor of the building. The Licensing Division will move to the second floor and the storage/file room will be moved to the first floor.

Agenda Item 16

**LEGAL REPORTS**

- Bonnie S. Brand, J.D., General Counsel
- Edward O. Cousineau, J.D., Deputy General Counsel
- Lyn E. Beggs, J.D., Deputy General Counsel
- Dianna Hegeduis, J.D., Chief Deputy Attorney General
- Board Litigation Status

### **- Board Litigation Status**

Ms. Brand reported that it has been a tremendous help having a third attorney on staff. There is one case currently before the Hearing Officer for synopsis for the March Board meeting, there are 43 cases pending hearings, 9 letters of concern were sent out, there are 10 cases in which the Investigative Committees have authorized the filing of formal complaints, there are 2 cases pending settlement, there are 50-plus cases requiring Investigative Committee summaries and there are in excess of 100 peer reviews in the field. The Mower case has been set for oral argument in the Nevada Supreme Court on December 12.

Ms. Hegeduis reported that in the Giarrusso case, the Judge ordered additional points and authorities be filed in support of the Board's motion to dismiss, addressing prosecutorial immunity for the Investigative Committee. She filed that document on Monday. There will be a hearing in the Federal Court on December 13th, and hopefully the Judge will make a decision on the motion by mid-December. The Steele case is still pending a decision by the Court.

### **RECESS**

Dr. Anwar recessed the meeting for lunch at 1:00 p.m.

### **RECONVENE**

Dr. Anwar reconvened the meeting at 1:30 p.m.

Agenda Item 17

### **ADJUDICATION IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. ROBERT FLIEGLER, M.D., BME CASE NO. 04-12993-1**

- Edward O. Cousineau, J.D., Deputy General Counsel

### **OPEN SESSION**

The non-adjudicating Board members, as well as Mr. Cousineau, left the room.

Mrs. Kirch asked the adjudicating Board members whether they had reviewed the information provided relative to the adjudication, and all members indicated they had.

Mrs. Kirch moved to go into Closed Session. Dr. Held seconded the motion, and it passed.

Upon returning to Open Session, Dr. Held moved that the Board find that Dr. Fliegler did not commit malpractice because his care of the patient did not fall below the standard of care. Dr. Rodriguez seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Dr. Held moved that the Board dismiss the counts of the complaint against Dr. Fliegler. Dr. Rodriguez seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 18

**ADJUDICATION IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. MICHAEL KAPLAN, M.D., BME CASE NO. 05-8547-1**

- Edward O. Cousineau, J.D., Deputy General Counsel

**OPEN SESSION**

The non-adjudicating Board members, as well as Mr. Cousineau, left the room.

Dr. Held moved to go into Closed Session. Dr. McBride seconded the motion, and it passed.

Upon returning to Open Session, Dr. McBride moved that the Board find Dr. Kaplan's treatment of the patient fell below the standard of care and he committed malpractice because he was an experienced urologist who operated on the wrong side of the body. Dr. Lamerson seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Dr. Rodriguez moved that Dr. Kaplan receive a public reprimand and that he be ordered to pay the costs of investigation and prosecution of the case against him, payable within 90 days of the date of the Board's order. Ms. Stoess seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 19

**ADJUDICATION IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. TAREK R. GREISS, M.D., BME CASE NO. 05-25060-1**

- Bonnie S. Brand, J.D., General Counsel

**OPEN SESSION**

The non-adjudicating Board members, as well as Ms. Brand, left the room.

Dr. Held moved to go into Closed Session. Dr. Lamerson seconded the motion, and it passed.

Upon returning to Open Session, Ms. Hegeduis read the counts of the complaint against Dr. Greiss, one count of inability to practice medicine with reasonable skill and safety because of illness, a mental or physical condition or the use of alcohol, drugs, narcotics or any other substance, a violation of NRS 630.306(1); one count of being habitually dependent on controlled substances and/or alcohol, a violation of NRS 630.306(10); and one count of willfully failing to comply with a condition for licensure imposed by the Board, to wit: participation in the diversion program, a violation of NRS 630.3065.

Dr. McBride moved that the Board find Dr. Greiss guilty of the three counts of the complaint against him. Dr. Held seconded the motion, and it passed unanimously, with all adjudicating members voting in favor of the motion.

Dr. McBride moved that the Board revoke Dr. Greiss' license to practice medicine and order Dr. Greiss to pay the costs of investigation and prosecution of the case against him, payable within 90 days of the Board's order. Dr. Rodriguez seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 21

**CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. RUSTICA BERNARDINO, M.D., BME CASE NO. 04-7715-1**

- Edward O. Cousineau, J.D., Deputy General Counsel

**OPEN SESSION**

Dr. Baepler stated the case against Dr. Bernardino was not strong and did not develop as expected, and that the proposed settlement seemed fair and equitable, so he recommended the Board approve the settlement agreement as written.

Mr. Cousineau explained the settlement agreement was the same as was presented at the September Board meeting, with the exception of the addition of release of liability language, and the new release has been signed Dr. Bernardino and counsel. The settlement agreement included in the Board packets was the old version, which did not include the release of liability language, but the settlement agreement he is requesting approval of is the new one which does include the release of liability language.

Dr. McBride moved that the Board accept the settlement with the addition of the release of liability language. Ms. Stoess seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 22

**CONSIDERATION OF STIPULATION FOR SETTLEMENT IN THE MATTER OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS vs. CATHERINE GORING, M.D., BME CASE NO. 04-9729-1**

- Edward O. Cousineau, J.D., Deputy General Counsel

**OPEN SESSION**

Mr. Cousineau described the case and the terms of the proposed settlement agreement. Dr. Goring would plead to one count of malpractice, would complete 10 hours of continuing medical education relating to the administration of Lithium and would pay the costs of investigation and prosecution of the case against her.

Dr. Held moved that the Board accept the settlement. Dr. Lamerson seconded the motion.

Discussion ensued concerning standard language of the Board's settlements and publication and reportability of settlements.

A vote was taken on the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Agenda Item 23

**LICENSURE RATIFICATION**

- Ratification of Licenses Issued, and Reinstatements of Licensure and Changes of Licensure Status  
Approved Since the September 9 & 10, 2005 Board Meeting

Dr. Baepler moved that the Board ratify the licenses issued and reinstatements of licensure and changes of licensure status approved since the September 9 & 10, 2005 Board meeting. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 24

**APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS  
FOR LICENSURE**

**24(a) Victor Hass, M.D.**

Mr. Clark advised the Board that Victor Hass, M.D. had withdrawn his application for licensure.

Dr. Held moved to go into Closed Session to discuss the character and professional competence of applicants for licensure. Dr. McBride seconded the motion, and it passed.

**CLOSED SESSION**

**24(b) Mysore Shilpa, M.D.**

Dr. Held questioned Mysore Shilpa, M.D., who appeared before the Board to respond to questions concerning her negative response to Question 19 on her application for licensure.

Dr. Shilpa explained that she responded in the negative to Question 19 because she originally thought the letter she had received from the Program Director of the Medical Oncology Fellowship and Director of the Division of Hematology and Oncology during her residency at the University of Texas Medical Branch at Galveston was merely an advisory letter. She did not have a copy of the letter when she completed the application. After she was contacted by the Board's staff, she realized it was a probationary letter, and that she had made a mistake in her response concerning the matter on her application, and she apologized for that. She did not have a copy of the letter when she applied for licensure, but if she had, she would have responded affirmatively to Question 19.

Dr. Held moved that the Board return to Closed Session. Mrs. Kirch seconded the motion, and it passed.

Upon returning to Open Session, Dr. Rodriguez moved that the Board grant Mysore Shilpa, M.D.'s application for licensure. Ms. Stoess seconded the motion, and it passed, with Dr. Held and Mrs. Kirch opposed to the motion and the Chair voting in favor of the motion.

Dr. Anwar admonished Dr. Shilpa to be sure she is accurate in completing any future applications.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Dr. McBride seconded the motion, and it passed.

**24(c) Vicki Chan-Padgett, P.A.-C**

Vicki Chan-Padgett, P.A.-C, did not appear before the Board.

Upon returning to Open Session, Dr. McBride moved that the Board grant Vicki Chan-Padgett, P.A.-C's application for licensure. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Ms. Stoess seconded the motion, and it passed.

**24(d) Eugenio Gerscovich, M.D.**

Eugenio Gerscovich, M.D., appeared before the Board on his application for licensure by endorsement.

Dr. Anwar asked Dr. Gerscovich why he wanted to practice medicine in Nevada, and Dr. Gerscovich stated he has been at the University of California in Davis for 18 years, owns a second home in Reno and likes the lifestyle there, and would like to practice in Nevada for the next two decades.

Dr. Baepler explained to Dr. Gerscovich the circumstances under which the Board grants licensure by endorsement.

Dr. Baepler moved that the Board decline to exercise its discretion to grant licensure by endorsement to Eugenio Gerscovich, M.D. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Baepler moved that the Board grant an unrestricted license to Eugenio Gerscovich, M.D, subject to successful passage of a peer review. Dr. Lamerson seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**24(e) John Dudek, M.D.**

Ms. Krotke advised the Board that John Dudek, M.D., was not present because he had been in a motorcycle accident, had undergone surgery on Wednesday and was unable to appear.

Dr. Baepler said that the only question he would have asked Dr. Dudek would have been where in Nevada he intended to practice, as he felt his circumstances were identical to all previous applications the Board had reviewed and approved wherein the physician was an oral & maxillofacial surgeon, and he did not see why the Board could not grant him a license as well.



Ms. Krotke stated he was going to practice in Las Vegas and that his father was a physician in Las Vegas.

Dr. Baepler moved that the Board grant John Dudek, M.D.'s application for licensure. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Ms. Stoess seconded the motion, and it passed.

**24(f) Phyllis Ager, M.D.**

Phyllis Ager, M.D., appeared before the Board on her application for licensure by endorsement.

Dr. Lamerson explained the circumstances under which the Board grants licensure by endorsement.

Dr. Ager told the Board she thought the License Specialist had changed her application to one for an unrestricted license. She stated she had a connection with a locums company like Comp Health and they told her there was a great need for radiation oncology coverage in Nevada, and that is what she planned to do. She is also certified in breast imaging. She told the Board she became an attorney for her own education because she loves to learn. She took the California Bar and might take the Nevada Bar if she moves to Nevada. She described what she had done to keep current in medicine.

Dr. Lamerson moved that the Board decline to exercise its discretion to grant licensure by endorsement to Phyllis Ager, M.D. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Lamerson moved that the Board grant an unrestricted license to Phyllis Ager, M.D., subject to successful passage of a peer review. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Ms. Stoess seconded the motion, and it passed.

**24(g) George Ilouno, P.A.-C**

Mrs. Kirch questioned George Ilouno, P.A.-C, who appeared before the Board to respond to questions concerning the fact he has not practiced as a physician assistant since graduating from physician assistant school in 1999, and his affirmative responses to Questions 13 and 20 on his application for licensure.

Mr. Ilouno told the Board he had applied for a student loan in 1990 using a false identity upon the advice of a friend, and that he regretted doing so. He said the reason he did not disclose that he had applied for a previous student loan when completing his application to return to school was that he had forgotten about it. He has repaid all student loans he received. He explained that he was denied licensure in California on the basis of fraud related to the

student loans. He described the circumstances surrounding his arrest in 2003 for driving under the influence, which resulted in a conviction for reckless driving, and his arrest for solicitation in 1989, which resulted in a conviction for disturbing the peace. He described what he had been doing to keep current in medicine since graduating from physician assistant school in 1999.

Mrs. Kirch moved to return to Closed Session. Dr. McBride seconded the motion, and it passed.

Upon returning to Open Session, Mrs. Kirch moved that the Board deny George Ilouno, P.A.-C's application for licensure, pursuant to NAC 630.310, based upon concerns that he is not qualified to practice medicine as a physician assistant because he has not practiced since receiving his degree in 1999, and evidence that he is not of good moral character or reputation. Dr. Baepler seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Ms. Stoess seconded the motion, and it passed.

**24(h) William Martin III, R.R.T.**

Dr. Rodriguez questioned William Martin III, R.R.T., who appeared before the Board to respond to questions concerning his affirmative responses to Questions 12, 19, 20 and 24 on his application for licensure.

Mr. Martin explained the circumstances surrounding his conviction for driving under the influence in 1993, his conviction for carrying a concealed weapon and giving false information in 1999, and explained why his California license was revoked in 1998. He described his practice history as a respiratory therapist and told the Board he also graduated from law school in California, but hadn't passed the Bar, and that he is still paying on his law school student loan. He told the Board he wants to come to Nevada because he likes the climate.

Dr. McBride moved that the Board return to Closed Session. Ms. Stoess seconded the motion, and it passed.

Upon returning to Open Session, Dr. Rodriguez moved that the Board grant William Martin III, R.R.T.'s application for licensure. Dr. Held seconded the motion, and it passed, with Mrs. Kirch and Ms. Stoess opposed to the motion and the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Ms. Stoess seconded the motion, and it passed.

**24(i) Thomas Platt, M.D.**

Dr. McBride questioned Thomas Platt, M.D., who appeared before the Board to respond to questions concerning his affirmative responses to Questions 13, 28 and 31 on his application for licensure.

Dr. Platt explained the circumstances surrounding his arrest for possession of images he had downloaded on his computer. He has undergone 11 months of therapy and a relapse prevention program and successfully completed his probation. His Michigan license was revoked, but was subsequently restored, and he has licenses in Texas and Rhode Island. He has been offered a potential position practicing medicine with a group in Las Vegas.

Dr. McBride moved that the Board return to Closed Session. Ms Stoess seconded the motion, and it passed.

Upon returning to Open Session, Dr. Anwar advised Dr. Platt that there was a sense that the Board was not favorably inclined to grant him licensure, although it would have to go to a vote. If his application was denied, it would be reportable to the National Practitioner Data Bank, so another option for him would be to withdraw his application before a vote was taken.

Dr. Platt withdrew his application.

Ms. Stoess moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed.

**24(j) Sudhir Finch, M.D.**

Ms. Stoess questioned Sudhir Finch, M.D., who appeared before the Board to respond to questions concerning his affirmative response to Question 12 on his application for licensure.

Dr. Finch described the circumstances surrounding the single malpractice case against him which resulted in a settlement.

Dr. McBride moved that the Board grant Sudhir Finch, M.D.'s application for licensure. Ms. Stoess seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

**Agenda Item 16 (CONTINUED)**

**LEGAL REPORTS** - Bonnie S. Brand, J.D., General Counsel  
Edward O. Cousineau, J.D., Deputy General Counsel  
Lyn E. Beggs, J.D., Deputy General Counsel  
Dianna Hegeduis, J.D., Chief Deputy Attorney General

- Board Litigation Status

**- Board Litigation Status**

Mr. Cousineau stated that in June of this year, the Board found Alvaro H. Devia, M.D. guilty of malpractice and required him to pay a \$5,000 fine, \$8,100 in costs and complete 20 hours of continuing medical education. Dr. Devia is a military reservist and was deployed somewhere in the southwest Asia area during the last couple of weeks. Mr. Cousineau was contacted by Dr. Devia's attorney three or four days before Dr. Devia was deployed, who requested Dr. Devia be granted additional time to comply with the terms of the order.

Mr. Cousineau discussed it with Ms. Brand, who thought it was acceptable, and telephonically with Dr. Anwar, who also felt it was acceptable, but for the record, he wanted to make sure the Board had no problems and wanted to memorialize the fact that a new order will be generated allowing Dr. Devia a year to comply with all the terms of the Board's order. The Board members indicated this was acceptable.

### **RECESS**

Dr. Anwar recessed the meeting at 5:45 p.m.

**SATURDAY, DECEMBER 3, 2005**

***Board Members Present***

Javaid Anwar, M.D., President  
Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer  
Marlene J. Kirch  
Charles N. Held, M.D.  
Jean Stoess, M.A.  
Cindy Lamerson, M.D.  
S. Daniel McBride, M.D.  
Benjamin J. Rodriguez, M.D.

***Board Members Absent***

Sohail U. Anjum, M.D., Vice President

***Staff Present***

Drennan A. Clark, J.D., Executive Director/Special Counsel  
Laurie L. Munson, Deputy Executive Director/  
Information Systems Administrator/Chief of Administration  
Bonnie S. Brand, J.D., General Counsel  
Lyn E. Beggs, J.D., Deputy General Counsel  
Robert J. Barnet, M.D., Medical Reviewer  
Jerry C. Calvanese, M.D., Medical Reviewer  
Lynnette L. Krotke, Chief of Licensing  
Carolyn H. Castleman, Deputy Chief of Licensing  
Trent S. Hiett, Investigator (in Reno)  
Donald A. Andreas, Investigator (in Reno)

***Also Present***

Dianna Hegeduis, J.D., Chief Deputy Attorney General

**RECONVENE**

Dr. Anwar reconvened the meeting at 8:30 a.m.

Agenda Item 24 ***(CONTINUED)***

**APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS  
FOR LICENSURE**

Dr. Baepler moved to go into Closed Session to discuss the character and professional competence of applicants for licensure. Ms. Stoess seconded the motion, and it passed.

**CLOSED SESSION**

**24(k) Mary Anderson, M.D.**

Mary Anderson, M.D. appeared before the Board on her application for licensure by endorsement.

Dr. Baepler stated that the single requirement Dr. Anderson doesn't meet is having passed a major examination within the last ten years. Dr. Anderson's predecessors at the Washoe County District Board of Health were not M.D.s and asked Dr. Anderson what duties she will have that they did not.

Dr. Anderson stated her predecessors were not M.D.s; they were primarily R.N.s, and therefore it was a technical point they did not practice medicine as they were in an administrative role. She too would be in primarily an administrative role; however, the District Board of Health for Washoe County required she pursue obtaining a medical license as a condition of employment. It would be a unique circumstance which would require her to practice clinically, such as a major outbreak, terrorist activity, etc.; she doesn't anticipate being in a practice setting where she would be writing prescriptions on a daily basis or that sort of thing, but it would be to her advantage to be licensed. She told the Board she is in the process of recertification through the American Board of Preventive Medicine and in the interim she took the American Board of Preventive Medicine 40-hour CME course in Washington, D.C., so she could do something to fulfill the requirement to be current. She explained the circumstances surrounding being placed on probation during her internship at the Navy Regional Medical Center in Jacksonville, Florida. She believes she will be the only physician in Nevada who is certified in Aerospace Medicine and Preventive Medicine.

Dr. Baepler moved that the Board exercise its discretion to grant licensure by endorsement to Mary Anderson, M.D. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Lamerson moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed.

#### **24(l) Gary Page, M.D.**

Dr. Lamerson questioned Gary Page, M.D., who appeared before the Board to respond to questions concerning his negative response to Question 13 and his affirmative responses to Questions 19, 28, 29, 31 and 32.

Dr. Page described his practice history and explained why he had used several last names. He described the circumstances surrounding his arrest for fraudulent use of a credit card in 1993 while attending B.Y.U., his being placed on probation while in residency at Creighton University, and the disciplinary action taken by the Utah Division of Occupational & Professional Licensing Board related to his prescribing of medications, including controlled substances, to website customers while employed by Medscripts, L.L.C.

Dr. Lamerson moved to return to Closed Session. Mrs. Kirch seconded the motion, and it passed.

Upon returning to Open Session, Dr. McBride moved that the Board deny Gary Page, M.D.'s application for licensure, based upon his false, misleading and/or inaccurate statements on his application for licensure, and his past problems with prescribing of controlled substances, and that Dr. Page be required to wait three years before he can reapply for licensure in Nevada. Dr. Baepler seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Held moved to return to Closed Session for the same purposes stated before. Dr. Rodriguez seconded the motion, and it passed.

**24(m) Warren Wheeler, M.D.**

Warren Wheeler, M.D. appeared before the Board on his application for licensure by endorsement.

Dr. Rodriguez questioned Warren Wheeler, M.D. concerning the fact that he has not passed a major examination in the last ten years.

Dr. Wheeler described his current practice, practice history and training, and his Board Certification in Hospice and Palliative Medicine. Hospice and Palliative Medicine is a separate Board which is not currently recognized by ABMS, and he is not Board Certified in Internal Medicine or Medical Oncology. If Hospice and Palliative Medicine becomes recognized by the ABMS as a subspecialty, he will automatically be Board Certified in that subspecialty without having to be Board Certified in either Internal Medicine or Medical Oncology.

Dr. McBride moved that the Board grant Warren Wheeler, M.D.'s application for licensure pending successful passage of a peer review. Ms. Stoess seconded the motion, and it passed, with the Chair opposed to the motion. Dr. McBride then withdrew his motion.

Dr. McBride moved that the Board decline to exercise its discretion to grant licensure by endorsement to Warren Wheeler, M.D. Dr. Rodriguez seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. McBride moved that the Board grant an unrestricted license to Warren Wheeler, M.D, subject to successful passage of a peer review. Mrs. Kirch seconded the motion, and it passed, with the Chair opposed to the motion.

Ms. Stoess moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed.

**24(n) David Delaney, M.D.**

David Delaney, M.D. appeared before the Board on his application for licensure by endorsement.

Ms. Stoess questioned Dr. Delaney concerning his affirmative response to Question 12 on his application for licensure, and the fact that he has not completed 36 months of progressive training.

Dr. Delaney described the circumstances surrounding the single claim of malpractice against him and told the Board he would keep his Board Certification in Family Practice current at all times while licensed in Nevada.

Dr. Lamerson moved that the Board decline to exercise its discretion to grant licensure by endorsement to David Delaney, M.D. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Ms. Stoess moved that the Board grant an unrestricted license to David Delaney, M.D, subject to his maintaining Board Certification in Family Practice. Dr. Lamerson seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Held moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed.

**24(o) Jay Bolnick, M.D.**

Dr. Held questioned Jay Bolnick, M.D., who appeared before the Board to respond to questions concerning his affirmative response to Question 31 on his application for licensure.

Dr. Bolnick described the circumstances surrounding the charges against him for unauthorized distribution and dispensation of anabolic steroids, which were subsequently dismissed, and the investigation by the Georgia Composite Board which arose from those charges.

Dr. Held moved that the Board grant Jay Bolnick, M.D.'s application for licensure. Dr. Baepler seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 25

**MATTERS FOR FUTURE AGENDA**

Mr. Clark stated the following matters will be on the Agenda for the March Board meeting: Consideration of a request by Barry Markman, M.D., a former Nevada-licensed physician, for out-of-state physicians to perform fraxel laser surgery in Nevada as a training course; consideration of a draft regulation concerning reinstatement after nonpayment of renewal fees; consideration of a redraft of the code of ethics and an update on conversations with the Osteo Board concerning a potential joint code of ethics; and a draft regulation on laser surgery.

Dr. Anwar stated many licensees are not very clear as to the requirements for continuing medical education in ethics, and many have stated that the classes available on ethics are worthless, so he suggested the Board consider setting up CME courses in the area of ethics that would be worthwhile to licensees. Mr. Clark said he would look into the matter.

Agenda Item 26

**PUBLIC COMMENT**

The Board received no public comment.

**ADJOURNMENT**

Dr. Anwar adjourned the meeting at 11:30 a.m.